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THE NEUTRALITY OF CHINA

In the December number of *The North American Review*, an able legal argument on "The Neutrality of Belgium" appeared from the pen of Professor A. G. De Lapradelle of Paris. The argument proves to be an indictment of Germany. Others may, perhaps, advance an argument which may be an indictment of both Great Britain and France. Our purpose in writing, is to make use of the sound legal principles, advanced by this distinguished Frenchman, to indict Japan for her violation of the neutrality of China. To discuss the subject, Japan must suffer criticism.

There is a marked difference between the character of Belgian neutrality and of Chinese neutrality. Belgium represents what is known as perpetual neutrality, when the neutral nation "renounces the right to make war" and is in turn "protected from all hostilities." China represents simple or temporary neutrality, wherein there is less guarantee of protection from others, while its sovereignty as a state remains intact. In the case of perpetual neutrality, it is imposed on the neutral state; in the case of temporary neutrality, it is inherent in every sovereign state. The rights and duties of neutral states, as recognized in international law, not only apply to perpetual neutrality, but also to every non-belligerent state. We desire, therefore, to apply the ordinary and well-known principles and laws of neutrality to the situation in China, when Japan proceeded to wage war on Germany.

Scarcely had war in Europe been declared when the Chinese government issued regulations for the observance of neutrality, in accordance with the law of nations. Realizing that the great warring powers of Europe had interests or leased territory in China, the Chinese government desired two things, that the war be limited to Europe, and, that if any conflict arose in China between the warring nations, the neutrality of China might be respected. To bring this about, negotiations took place between the foreign ministers chiefly concerned, especially the British and German. The German representative, knowing that Tsingtao was open to attack, and thus likely to involve China, was willing, with the consent of the German governor-general

at Tsingtao, to consent to three things, first, that the German squadron remain away from Tsingtao, second, that the small gun-boat and torpedo boats still in harbor be interned, and, third, that Tsingtao with the Shantung-railway be placed under Chinese jurisdiction or be neutralized, until the end of the war. The German legation also promised to abstain from hostile operations if Japan remained neutral.

The Chinese government, anxious to avoid danger of complications, determined upon a policy of equal treatment, namely, that no obstacle should be placed in the way of belligerent action within any territory leased to the nations at war, and not neutralized, that is, to Germany, Great Britain, and France. Any fighting within these leased territories at Kiaochow, at Weihaiwei, at Kowloon (opposite Hongkong), and at Kuangchowwan, would not be regarded as fighting on Chinese territory; thus would China's neutrality be preserved.

It can be readily seen that the idea of Tsingtao as a base for the German squadron, and, as such, becoming a "Menace to the peace of the Far East," was a mere figment of the brain. It is also seen, that if war had been limited to European nations, no harm would have been wrought to China, and her neutrality in all probability would not have been violated.

China approached both Japan and the United States and asked them to remain neutral in the Far East. Japan, after some delay, decided to reject China's proposal, and to yield to Great Britain's request for aid. The plea was put forward that the Anglo-Japanese alliance compelled such action. If Great Britain needed Japan's help on the seas, she did not need it on Chinese soil. Even if an attack on Tsingtao was found to be unavoidable, the fighting should have been confined to the leased territory, going back for more than 30 miles from the shore, a restriction which the British contingent faithfully observed.

If the alliance forced Japan to enter the war, it should also have forced her to "preserve the independence and integrity of China," for which the alliance was ostensibly formed.

Tsingtao, or the larger leased area of Kiaochow, lies on the south side of the long Shantung promontory. On the north side, running from east to west, are three ports, Weihaiwei, leased to Great Britain, Chefoo, a treaty port, and Lungkou, only a Chinese harbor, but at the time not yet a treaty port. In all this section of the country, Germany had no railway or other established interests. The German "sphere of interest" runs

west of Tsingtao. It should also be noted that Lungkou is on the side of the Pehchile Gulf opposite Port Arthur, which is leased to Japan.

Very early in the war Japanese cruisers and transports entered the harbor of Lungkou and remained there beyond the 24 hours limit, while troops forcibly landed and occupied the town, and later on marched across Chinese territory to the rear of Tsingtao. The Chinese customs and post offices were taken possession of, and a military telegraph and railway were stretched across the country, without regard to the rights of the Chinese people and despite repeated protests of the Chinese government.

May we be allowed to quote Professor De Lapradelle:

"Furthermore, to demand of Belgium to allow the German troops to pass through Belgian territory was not only contrary to perpetual neutrality, it was contrary to temporary neutrality." What Japan did was contrary to temporary neutrality; the law of nations was broken. No western nation apparently regards the matter as of any consequence.

"The Hague Convention of October 18, 1907, on the rights and duties of neutral states, signed by Germany and Belgium [by Japan and China], is explicit on this point: 'Art. 1. The territory of neutral powers is inviolable. Art 2. Belligerents are forbidden to move troops or convoys, whether of munitions of war or of supplies, across the territory of a neutral power.'" What is a sacred obligation in Europe should be a sacred obligation in Asia as well, especially since Japan is an honored ally of Great Britain.

"To ask passage of her troops was for Germany to associate Belgium with her in the war, to expose her, in the improbable case of her assenting, to a just punishment by the powers from such treason to her duties. If the neutrality of Belgium had been temporary, Germany could not, without forcing her to enter into an alliance with her, have demanded passage; such a concession would have been on the part of the neutral state an act of belligerence." The same principle applies to Japan's conduct towards China.

The Chinese government barely escaped becoming a belligerent on Japan's side. Japan *forced* a passage, and China protested; this was safe and proper. Following the advice of Dr. Ariga, the Japanese legal adviser to the Chinese government, and with the approval of the British minister, China consented to a war-zone. The Japanese legal expert cited as precedent the Russo-

Japanese war, when Manchuria east of the Liao river was made a war-zone.

China was placed in an awkward position; not more so, perhaps, than neutral countries in Europe. China had one of three courses open to her. One was to defend her neutrality, and resist by force of arms the passage of Japanese soldiers. Such action would not conflict with international law, for the Hague Convention of 1907, Article 10, says: "The fact of a neutral power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act." Such resistance was what Belgium made, and in so doing she had the promised help of Great Britain and France. If China, in resisting Japan, had looked to Great Britain and France for help, she might have looked in vain. She might have expected help from Germany, but in that case the ties between Japan, Great Britain and France would have been knit the stronger. In fact Japan treated the rules of the Hague as "A scrap of paper," so far as her relations with China were concerned. If China had resisted, Japan would beyond doubt have declared war upon China as well as on Germany, and China's dangers would have increased a thousand-fold. She would have suffered, more than Belgium suffered when she decided to resist Germany. China, knowing the danger, was wise, therefore, in not adopting the method of resistance.

A second course to pursue was simply to protest, and to record her protest for future deliberation and decision. China was advised to adopt this method, but she was finally persuaded to adopt another method, namely, that of protesting and also granting a war-zone. By so doing, she, in accordance with recognized principles, practically became a belligerent on the side of Japan as against Germany. The precedent cited from the Russo-Japanese war was in reality no precedent; the circumstances were in no wise the same. In that war, Russian troops had already for several years occupied southern Manchuria; in the present case, German troops had never gone outside the limits of the German leased territory. In the former war, Russia as well as Japan had agreed to the proposition of a war-zone; in the present war, Germany had not given her consent, and was not even consulted. In the former war, the war-zone was of equal benefit to Russia and to Japan; in the present case it was to Japan's advantage and to Germany's disadvantage. Though it now appears from these and other reasons that China

should never have consented to a war-zone, through which Japanese troops were permitted to pass, the consent was given that conflict with Japan might be avoided. This yielding of China to Japan's wishes has not been appreciated by Japan; rather, the leniency has been made a pretext for Japan to assume the rôle of sovereign on Chinese soil.

The forced passage of Japanese troops from Lungkou to Tsingtao was called a "military necessity." The absurdity of such a claim is readily seen, when one considers that on the one side were less than 5,000 Germans, a poorly-fortified garrison, facing Japanese and British men-of-war, with 30,000 Japanese soldiers equipped for action, and the whole Japanese army within a few hours' call. There was no military necessity, but only a political necessity to carry out a political strategy for the occupation of the province of Shantung.

The first violation of China's neutrality was soon followed by a more pronounced violation. Japanese troupes marched outside the war-zone, took possession of the railway-station at Weih sien, to the west of Tsingtao, and then occupied the entire railway as far as Tsinanfu and also all the mines worked by the Germans. The occupation continues. The military guard was not removed after Tsingtao was captured.

Defenders of Japanese action hold two positions which are irreconcilable the one to the other. The claim is made that the railway was a German government-railway, and another claim is made that the Germans had first violated China's neutrality by the transport of troops and munitions of war. If the railway belonged to the German government, then the transport of troops and munitions of war would have been legitimate, and therefore no infringement of *Chinese* neutrality.

As a matter of fact the railway has been built and is the property of a German-Chinese company, incorporated in Germany, just as other companies or syndicates have been incorporated in other countries. The railway and mines were "concessions" granted by the Chinese government through treaty arrangement with the German government; it was clearly stipulated that, as in the leased territory of Kiaochow, there were "no treacherous intentions towards China" on the part of Germany. The company was a German-Chinese company, a private and not a government company; the territory through which it runs is Chinese and neutral territory, over which China's sovereign rights are retained. By special agreement with the

Chinese government only Chinese soldiers were to act as railway guards.

Taking, then, the position that the railway was on Chinese, not on German, territory, were the Germans the first to be guilty of violating China's neutrality? From the outset the Chinese government determined to make no discrimination between one belligerent and another in the matter of travel by land or by sea. If belligerents traveled as civilians, in civilian dress, and without weapons, the Chinese authorities would present no objection. Chinese action was one of impartiality, the essence of neutrality. German action conformed to the Chinese arrangement just as much as the British, the Russian and the French, and far more than the Japanese.

With reference to the transport of munitions of war by Germany, no protest was entered at the time by any belligerent, and China, a neutral power, was under no obligation to lay upon herself additional burdens, because of war between other nations. There was, moreover, no question of the Chinese selling contraband. If there were any arms transported over neutral territory, they were already in German possession, and before Japan declared war. So far as international law has established a clear principle, seizure by an enemy can only take place "on the high seas." No enemy thinks of capturing contraband of war on neutral soil.

Even if China was "liable to penalty," the wrong kind of penalty was inflicted by Japan, namely, forceful, military occupation of the Shantung-Railway in neutral territory, and the refusal to China of the right of management, control and protection. Japan drove out not only Germany, but China as well. Continued occupation from Tsingtao to Tsinanfu, like continued occupation from Lungkou to Tsingtao, is a continued infringement not only of China's neutrality, but of China's sovereignty, and this in the face of an alliance guaranteeing China's independence and autonomy.

In this additional violation of China's neutrality, Japan made the same excuse as in the previous case, namely, "military necessity"; but this was only to conceal her real purpose, that of political aggression. It was plain that in capturing Tsingtao there was no need of occupying the railway westward as far as Tsinanfu. In fact the obligation to defend China's neutrality or to consult China's wishes carried no weight with Great Britain's chosen ally, Japan.

It is somewhat difficult to understand the feeling of Americans regarding the rights of nations and the wrongs done by one nation to another. Americans seem to condemn Germany for violating the neutrality of Belgium, but seem at the same time to overlook Japan's infringement of China's neutrality. The length of territory thus violated by Japan in China is twice the length of that violated by Germany in Belgium. Americans seem to applaud Great Britain for claiming that her purpose was to defend the weaker nations, and so the neutrality of Belgium, yet they at the same time seem to countenance her action in abetting Japan's violation of the neutrality of China. They pity Belgium for what she suffers in resisting Germany, but they do not show even interest in the political misfortunes which threaten China at the hands of Japan, although China has scrupulously refrained from giving offence or from committing any act of war. They lament the reported German atrocities in Belgium, but they practically ignore the good which Germany has wrought, in missions, in science, in education and in trade, for the Chinese people. Americans declare that Germany should pay for the losses she has inflicted on Belgium, but they excuse the harm, the loss, the encroachment which China continues to suffer at the hands of Japan, abetted by Great Britain. Does it mean, then, that Americans regard these questions of international intercourse, not from the standpoint of high principle, law and justice, but from a standpoint prejudiced by natural preference?

"If Belgium (China) is now suffering more than any people has ever suffered, it does not mean that in the mass of legal institutions that of neutrality is particularly fragile or more particularly imperfect, but that international law is at this moment too weak to resist the audacious onslaught of those powers whose military pride has perverted their sense of right and whose devouring ambition has corrupted their sense of justice." How can we hope that the careless unconcern of the great powers toward the rights of China can fail to bring upon themselves unlooked-for suffering in the generations yet to come? Every country professing to believe in international law should come forward to the defence of China and the indictment of Japan.

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